



Entered on Docket
January 13, 2009

Hon. Linda B. Riegler
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
USA COMMERCIAL MORTGAGE COMPANY,

Debtor.

Case Nos.:
BK-S-06-10725-LBR
BK-S-06-10726-LBR
BK-S-06-10727-LBR

In re:
USA CAPITAL REALTY ADVISORS, LLC,

Debtor.

BK-S-06-10728-LBR
BK-S-06-10729-LBR

In re:
USA CAPITAL DIVERSIFIED TRUST DEED FUND,
LLC,

Debtor.

JOINTLY ADMINISTERED
Chapter 11 Cases

In re:
USA CAPITAL FIRST TRUST DEED FUND, LLC,

Debtor.

Judge Linda B. Riegler

In re:
USA SECURITIES, LLC,

Debtor.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW IN
SUPPORT OF ORDER
APPROVING SETTLEMENT
WITH PIERCY, BOWLER,
TAYLOR & KERN PC**

Affects:
☒ All Debtors
☐ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

1 This Court, having considered the *Application to Compromise and Settle Controversies with*
2 *Piercy, Bowler, Taylor & Kern, PC* (the “Motion”) and the Declarations of Geoffrey L. Berman and
3 Michael Tucker in support thereof and the arguments of counsel made at the hearing on the Motion to
4 Compromise held December 23, 2008; and

5 This Court having considered the Pleading in Support of the Motion to Compromise and the
6 arguments of counsel, now therefore makes the following findings of fact and conclusions of law under
7 Federal Rule of Civil Procedure 52 and Federal Rules of Bankruptcy Procedure 7052 and 9019.

8 1. Notice of the Motion (“Notice”) was properly served on all creditors of the above-titled
9 estates.

10 2. The claims being settled are assets of the USACM Liquidating Trust (the “USACM
11 Trust”). Geoffrey L. Berman (“Berman” or the “Trustee”) currently serves as a trustee of the USACM
12 Liquidating Trust.

13 3. The claims being compromised also belong to USA Capital Diversified Trust Deed
14 Fund, LLC (“DTDF”). Michael Tucker (the “Manager”) is the manager of DTDF.

15 4. The beneficiaries of USACM Trust and DTDF are the creditors of USA Commercial
16 Mortgage Company (“USACM”) and the interest holders in DTDF.

17 5. The claims being compromised herein arise from professional services rendered by
18 Piercy, Bowler, Taylor & Kern, PC (“PBTk”) to USA Commercial Mortgage Company.

19 6. The USACM Trust and DTDF have investigated the merits of the claims against PBTk
20 and have conducted such investigation as they deemed reasonable into the merits of the claim. In
21 addition, the USACM Trust and DTDF have inquired into the complexity of proving the potential
22 claims, the expense of prosecuting such claims, the duration of litigation or other means for
23 prosecuting the claims, and have evaluated the difficulties of collection and the assets available for

1 satisfying any potential judgment.

2 7. Based upon this evaluation, the Trustee and the Manager have recommended this
3 compromise as fair and equitable.

4 8. The Compromise is fair and equitable to the USACM Trust.

5 9. The Compromise is fair and equitable to DTDF.

6 10. At the present time, no claims for indemnification or contribution have been asserted,
7 although the USACM Trust and DTDF have commenced litigation against persons and entities that
8 may have such claims.

9 11. At the present time, no claims have been asserted by creditors of any of the above-titled
10 estates against PBTK.

11 12. No USACM Trust beneficiary or DTDF interest holder has objected to this
12 compromise.

13 13. The amount paid in the settlement is fair and equitable in light of PBTK's insurance
14 policy limits and PBTK's financial condition.

15 14. There was no collusion, fraud, or tortious conduct in connection with the negotiation
16 and execution of the Settlement Agreement. No evidence was presented to this Court that there was
17 any collusion, fraud, or tortious conduct aimed to injure any non-settling defendants in connection with
18 the negotiation and execution of the Settlement Agreement.

19 15. The Settlement Agreement is in the paramount interest of the creditors.

20 **CONCLUSIONS OF LAW**

21 1. Notice has been given to all parties to the above-titled estates.

22 2. USACM Trust and DTDF have standing to assert the claims being settled and have
23 standing to bring this Motion.

1 3. In light of the complexity of the potential claims, the expense of litigating these claims,
2 the duration of such litigation, and the difficulties of collection in the event the estates are successful,
3 the settlement with PBTk is fair and equitable and reasonable under the circumstances and therefore is
4 approved under Federal Rule of Bankruptcy Procedure 9019.

CERTIFICATION PURSUANT TO LOCAL RULE 9021

In accordance with LR 9021, counsel submitting this document certifies as follows (check one):

_____ The court has waived the requirement of approval under LR 9021

_____ No parties appeared or filed written objections, and there is no trustee appointed in the case.

 X I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and any trustee appointed in this case, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document.]

Approved Timothy R. O'Reilly /s/ Timothy R. O'Reilly

Approved Vincent O'Gara /s/ Vincent O'Gara

DATED: January 5, 2009

 /s/ P. Jason Collins

P. Jason Collins

*Counsel for USACM Liquidating Trust and
USA Capital Diversified Trust Deed Fund, LLC*

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